

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 14-0273.01 Gregg Fraser x4325

SENATE BILL 14-073

SENATE SPONSORSHIP

Jahn, Grantham, Hodge, Tochtrop

HOUSE SPONSORSHIP

Gerou,

Senate Committees

Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 CONCERNING THE STATE INCOME TAX CREDIT FOR THE
102 ENVIRONMENTAL REMEDIATION OF CONTAMINATED LAND IN
103 THE STATE.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

From 2000 through 2010, there was a state income tax credit for taxpayers who conducted certain environmental remediation activities on property that was proposed for redevelopment. The bill reauthorizes the credit for a 9-year period commencing in 2014 as follows:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

- ! The property can be located anywhere in the state;
- ! The remediation need not be for property that will be redeveloped;
- ! A formula for calculating the amount of the credit is specified; and
- ! The credit may be transferred by a taxpayer to a transferee who may then claim the credit.

The taxpayer seeking the credit must obtain a certificate from the department of public health and environment certifying the accuracy of the costs of the clean up and that a clean up plan has been fully implemented. The credit can be carried forward for up to 5 years.

Local governments and private nonprofit entities do not pay income taxes in the state but do incur expenses in conducting environmental remediation activities. Subject to the same terms and in the same amounts as the re-authorized credit allowed to taxpayers, the bill allows certain local governments and private nonprofit entities to transfer a portion of these expenses to transferees who may then claim the amounts as an income tax credit.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **repeal and reenact,**
 3 **with amendments,** 39-22-526 as follows:

4 **39-22-526. Credit for environmental remediation of**
 5 **contaminated land - definition - repeal.** (1) (a) FOR INCOME TAX YEARS
 6 COMMENCING ON OR AFTER JANUARY 1, 2014, BUT PRIOR TO JANUARY 1,
 7 2023, THERE IS ALLOWED A CREDIT AGAINST THE INCOME TAXES IMPOSED
 8 BY THIS ARTICLE FOR ANY APPROVED ENVIRONMENTAL REMEDIATION OF
 9 CONTAMINATED PROPERTY TO ANY TAXPAYER WHO MEETS THE
 10 FOLLOWING REQUIREMENTS:

11 (I) THE PROPERTY WHERE THE ENVIRONMENTAL REMEDIATION
 12 TAKES PLACE MUST BE LOCATED WITHIN THE STATE; AND

13 (II) THE TAXPAYER SEEKING THE CREDIT MUST POSSESS A
 14 CERTIFICATE ISSUED BY THE DEPARTMENT OF PUBLIC HEALTH AND
 15 ENVIRONMENT PURSUANT TO SECTION 25-16-306 (5) (b), C.R.S.

1 (b) THE TAX CREDIT ALLOWED IN THIS SECTION MUST NOT EXCEED
2 FORTY PERCENT OF THE FIRST SEVEN HUNDRED FIFTY THOUSAND DOLLARS
3 EXPENDED FOR THE APPROVED REMEDIATION, AND MUST NOT EXCEED
4 THIRTY PERCENT OF THE NEXT SEVEN HUNDRED FIFTY THOUSAND DOLLARS
5 EXPENDED FOR THE APPROVED REMEDIATION. A TAX CREDIT IS NOT
6 ALLOWED FOR EXPENDITURES EXCEEDING ONE MILLION FIVE HUNDRED
7 THOUSAND DOLLARS ON ANY INDIVIDUAL PROJECT.

8 (c) A CREDIT MUST BE FIRST APPLIED TO TAXES DUE OR
9 TRANSFERRED TO ANOTHER TAXPAYER PURSUANT TO PARAGRAPH (d) OF
10 THIS SUBSECTION (1) NO LATER THAN THE TAX YEAR FOLLOWING THE TAX
11 YEAR IN WHICH THE CERTIFICATION IS PROVIDED TO THE DEPARTMENT
12 PURSUANT TO SECTION 25-16-306 (5) (a), C.R.S. IF THE CREDIT ALLOWED
13 BY THIS SECTION EXCEEDS THE TAX OTHERWISE DUE, THE EXCESS CREDIT
14 MAY BE CARRIED FORWARD AND CLAIMED ON THE EARLIEST POSSIBLE
15 SUBSEQUENT TAX RETURN FOR A PERIOD NOT TO EXCEED FIVE YEARS.

16 (d) A TAXPAYER MAY TRANSFER ALL OR A PORTION OF A TAX
17 CREDIT GRANTED PURSUANT TO THIS SUBSECTION (1) TO ANOTHER
18 TAXPAYER FOR SUCH OTHER TAXPAYER, AS TRANSFEREE, TO APPLY AS A
19 CREDIT AGAINST THE TAXES IMPOSED BY THIS ARTICLE SUBJECT TO THE
20 FOLLOWING LIMITATIONS:

21 (I) THE TAXPAYER MAY ONLY TRANSFER A PORTION OF THE TAX
22 CREDIT THAT THE TAXPAYER HAS NEITHER APPLIED AGAINST THE INCOME
23 TAXES IMPOSED BY THIS ARTICLE NOR USED TO OBTAIN A REFUND;

24 (II) THE TAXPAYER MAY TRANSFER A PRORATED PORTION OF THE
25 TAX CREDIT TO MORE THAN ONE TRANSFEREE;

26 (III) FOR ANY TAX YEAR IN WHICH A TAX CREDIT IS TRANSFERRED
27 PURSUANT TO THIS PARAGRAPH (d), BOTH THE TAXPAYER AND THE

1 TRANSFEREE SHALL FILE WRITTEN STATEMENTS WITH THEIR INCOME TAX
2 RETURNS SPECIFYING THE AMOUNT OF THE TAX CREDIT TRANSFERRED. A
3 TRANSFEREE MAY ONLY CLAIM A CREDIT TRANSFERRED PURSUANT TO THIS
4 PARAGRAPH (d) IF THE TAXPAYER'S WRITTEN STATEMENT VERIFIES THE
5 AMOUNT OF THE TAX CREDIT CLAIMED BY THE TRANSFEREE.

6 (IV) A TRANSFEROR MAY TRANSFER A CREDIT PURSUANT TO THIS
7 PARAGRAPH (d) REGARDLESS OF WHETHER THE TRANSFEROR RECEIVES
8 VALUE IN EXCHANGE FOR THE TRANSFER. THE TRANSFEREE MAY USE THE
9 CREDIT TO PAY, IN WHOLE OR IN PART, THE INCOME TAX OBLIGATION
10 IMPOSED ON THE TRANSFEREE UNDER THIS ARTICLE. THE TRANSFEREE'S
11 USE OF A TAX CREDIT FROM A TRANSFEROR UNDER THIS SECTION TO PAY
12 TAXES OWED IS NOT DEEMED A REDUCTION IN THE AMOUNT OF INCOME
13 TAXES IMPOSED BY THIS ARTICLE ON THE TRANSFEREE.

14 (V) THE TRANSFEREE SHALL SUBMIT TO THE DEPARTMENT OF
15 REVENUE A FORM APPROVED BY THE DEPARTMENT ESTABLISHING THAT
16 THE TAXPAYER HAS SATISFIED THE REQUIREMENTS OF THIS SECTION. THE
17 TRANSFEREE SHALL ALSO FILE A COPY OF THE FORM WITH THE
18 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

19 (VI) THE TRANSFER OF A TAX CREDIT MUST OCCUR PRIOR TO THE
20 DUE DATE IMPOSED BY THIS ARTICLE, NOT INCLUDING ANY EXTENSIONS,
21 FOR FILING THE TRANSFEREE'S INCOME TAX RETURN;

22 (VII) A TAX CREDIT HELD BY AN INDIVIDUAL EITHER DIRECTLY OR
23 AS A RESULT OF A DONATION BY A PASS-THROUGH ENTITY, BUT NOT A TAX
24 CREDIT HELD BY A TRANSFEREE UNLESS USED BY THE TRANSFEREE'S
25 ESTATE FOR TAXES OWED BY THE ESTATE, SURVIVES THE DEATH OF THE
26 INDIVIDUAL AND MAY BE CLAIMED OR TRANSFERRED BY THE DECEDENT'S
27 ESTATE;

1 (VIII) THE TRANSFEROR OF A TAX CREDIT TRANSFERRED
2 PURSUANT TO THIS PARAGRAPH (d) IS THE TAX MATTERS REPRESENTATIVE
3 IN ALL MATTERS WITH RESPECT TO THE CREDIT. THE TAX MATTERS
4 REPRESENTATIVE IS RESPONSIBLE FOR REPRESENTING AND BINDING THE
5 TRANSFEREES WITH RESPECT TO ALL ISSUES AFFECTING THE CREDIT,
6 INCLUDING THE AMOUNTS EXPENDED FOR THE APPROVED REMEDIATION,
7 THE CERTIFICATE ISSUED BY THE DEPARTMENT OF PUBLIC HEALTH AND
8 ENVIRONMENT, NOTIFICATIONS AND CORRESPONDENCE FROM AND WITH
9 THE DEPARTMENT OF REVENUE, AUDIT EXAMINATIONS, ASSESSMENTS OR
10 REFUNDS, SETTLEMENT AGREEMENTS, AND THE STATUTE OF LIMITATIONS.
11 THE TRANSFEREE IS SUBJECT TO THE SAME STATUTE OF LIMITATIONS WITH
12 RESPECT TO THE CREDIT AS THE TRANSFEROR OF THE CREDIT.

13 (IX) FINAL RESOLUTION OF DISPUTES REGARDING THE TAX CREDIT
14 BETWEEN THE DEPARTMENT OF REVENUE AND THE TAX MATTERS
15 REPRESENTATIVE, INCLUDING FINAL DETERMINATIONS, COMPROMISES,
16 PAYMENT OF ADDITIONAL TAXES OR REFUNDS DUE, AND ADMINISTRATIVE
17 AND JUDICIAL DECISIONS, IS BINDING ON TRANSFEREES.

18 (2) (a) FOR INCOME TAX YEARS COMMENCING ON OR AFTER
19 JANUARY 1, 2014, BUT PRIOR TO JANUARY 1, 2023, THERE IS ALLOWED TO
20 ANY QUALIFIED ENTITY A TRANSFERABLE EXPENSE AMOUNT FOR EXPENSES
21 INCURRED BY THE QUALIFIED ENTITY IN PERFORMING APPROVED
22 ENVIRONMENTAL REMEDIATION. THE TRANSFERABLE EXPENSE AMOUNT
23 MAY ONLY BE TRANSFERRED TO A TAXPAYER TO BE CLAIMED BY THE
24 TAXPAYER AS A CREDIT PURSUANT TO THE PROVISIONS OF THIS
25 SUBSECTION (2). THE TRANSFERRABLE EXPENSE AMOUNT IS ALLOWED TO
26 ANY QUALIFIED ENTITY THAT MEETS THE FOLLOWING REQUIREMENTS:

27 (I) THE PROPERTY WHERE THE ENVIRONMENTAL REMEDIATION

1 TAKES PLACE MUST BE LOCATED WITHIN THE STATE; AND

2 (II) THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
3 MUST HAVE ISSUED A CERTIFICATE FOR THE PROPERTY PURSUANT TO
4 SECTION 25-16-306 (5) (b), C.R.S.

5 (b) THE TRANSFERABLE EXPENSE AMOUNT ALLOWED IN THIS
6 SECTION MUST NOT EXCEED FORTY PERCENT OF THE FIRST SEVEN
7 HUNDRED FIFTY THOUSAND DOLLARS EXPENDED BY THE QUALIFIED ENTITY
8 FOR THE APPROVED REMEDIATION, AND MUST NOT EXCEED THIRTY
9 PERCENT OF THE NEXT SEVEN HUNDRED FIFTY THOUSAND DOLLARS
10 EXPENDED BY THE QUALIFIED ENTITY FOR THE APPROVED REMEDIATION.
11 A TRANSFERABLE EXPENSE AMOUNT IS NOT ALLOWED FOR EXPENDITURES
12 EXCEEDING ONE MILLION FIVE HUNDRED THOUSAND DOLLARS ON ANY
13 INDIVIDUAL PROJECT.

14 (c) A QUALIFIED ENTITY MAY TRANSFER ALL OR A PORTION OF A
15 TRANSFERABLE EXPENSE AMOUNT ALLOWED PURSUANT TO THIS
16 SUBSECTION (2) TO A TAXPAYER FOR SUCH TAXPAYER, AS TRANSFEREE, TO
17 APPLY AS A CREDIT AGAINST THE TAXES IMPOSED BY THIS ARTICLE
18 SUBJECT TO THE FOLLOWING LIMITATIONS:

19 (I) THE QUALIFIED ENTITY MAY TRANSFER A PRORATED PORTION
20 OF THE TRANSFERABLE EXPENSE AMOUNT TO MORE THAN ONE
21 TRANSFEREE;

22 (II) FOR ANY TAX YEAR IN WHICH A TRANSFERABLE EXPENSE
23 AMOUNT IS TRANSFERRED PURSUANT TO THIS SUBSECTION (2), THE
24 QUALIFIED ENTITY SHALL FILE A WRITTEN STATEMENT WITH THE
25 DEPARTMENT OF REVENUE ON A FORM APPROVED BY THE DEPARTMENT OF
26 REVENUE AND THE TRANSFEREE SHALL FILE A WRITTEN STATEMENT WITH
27 THE TRANSFEREE'S INCOME TAX RETURN SPECIFYING THE AMOUNT

1 TRANSFERRED TO THE TRANSFEREE TO BE CLAIMED AS A CREDIT. A
2 TRANSFEREE MAY ONLY CLAIM A CREDIT PURSUANT TO THIS SUBSECTION
3 (2) IF THE QUALIFIED ENTITY'S WRITTEN STATEMENT VERIFIES THE
4 AMOUNT OF THE TAX CREDIT CLAIMED BY THE TRANSFEREE.

5 (III) A QUALIFIED ENTITY MAY TRANSFER A TRANSFERABLE
6 EXPENSE AMOUNT TO BE CLAIMED AS A CREDIT BY A TRANSFEREE
7 PURSUANT TO THIS SUBSECTION (2) REGARDLESS OF WHETHER THE
8 QUALIFIED ENTITY RECEIVES VALUE IN EXCHANGE FOR THE TRANSFER. THE
9 TRANSFEREE MAY USE THE CREDIT TO PAY, IN WHOLE OR IN PART, THE
10 INCOME TAX OBLIGATION IMPOSED ON THE TRANSFEREE UNDER THIS
11 ARTICLE. THE TRANSFEREE'S USE OF A TAX CREDIT FROM A QUALIFIED
12 ENTITY UNDER THIS SECTION TO PAY TAXES OWED IS NOT DEEMED A
13 REDUCTION IN THE AMOUNT OF INCOME TAXES IMPOSED BY THIS ARTICLE
14 ON THE TRANSFEREE.

15 (IV) THE TRANSFEREE SHALL SUBMIT TO THE DEPARTMENT OF
16 REVENUE A FORM APPROVED BY THE DEPARTMENT ESTABLISHING THAT
17 THE TRANSFEREE HAS SATISFIED THE REQUIREMENTS OF THIS SECTION.
18 THE TRANSFEREE SHALL ALSO FILE A COPY OF THE FORM WITH THE
19 DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT.

20 (V) THE TRANSFER OF A TRANSFERABLE EXPENSE AMOUNT TO A
21 TRANSFEREE MUST OCCUR PRIOR TO THE DUE DATE IMPOSED BY THIS
22 ARTICLE, NOT INCLUDING ANY EXTENSIONS, FOR FILING THE TRANSFEREE'S
23 INCOME TAX RETURN;

24 (VI) A TAX CREDIT HELD BY A TRANSFEREE'S ESTATE FOR TAXES
25 OWED BY THE ESTATE, SURVIVES THE DEATH OF THE TRANSFEREE AND
26 MAY BE CLAIMED OR TRANSFERRED BY THE DECEDENT'S ESTATE;

27 (VII) THE QUALIFIED ENTITY THAT TRANSFERS A TRANSFERABLE

1 EXPENSE AMOUNT TO BE CLAIMED AS A CREDIT BY A TRANSFEREE
2 PURSUANT TO THIS SUBSECTION (2) IS THE TAX MATTERS REPRESENTATIVE
3 IN ALL MATTERS WITH RESPECT TO THE CREDIT. THE TAX MATTERS
4 REPRESENTATIVE IS RESPONSIBLE FOR REPRESENTING AND BINDING THE
5 TRANSFEREES WITH RESPECT TO ALL ISSUES AFFECTING THE CREDIT,
6 INCLUDING THE AMOUNTS EXPENDED FOR THE APPROVED REMEDIATION,
7 THE CERTIFICATE ISSUED BY THE DEPARTMENT OF PUBLIC HEALTH AND
8 ENVIRONMENT, NOTIFICATIONS AND CORRESPONDENCE FROM AND WITH
9 THE DEPARTMENT OF REVENUE, AUDIT EXAMINATIONS, ASSESSMENTS OR
10 REFUNDS, SETTLEMENT AGREEMENTS, AND THE STATUTE OF LIMITATIONS.

11 (VIII) FINAL RESOLUTION OF DISPUTES REGARDING THE TAX
12 CREDIT BETWEEN THE DEPARTMENT OF REVENUE AND THE TAX MATTERS
13 REPRESENTATIVE, INCLUDING FINAL DETERMINATIONS, COMPROMISES,
14 PAYMENT OF ADDITIONAL TAXES OR REFUNDS DUE, AND ADMINISTRATIVE
15 AND JUDICIAL DECISIONS, IS BINDING ON TRANSFEREES.

16 (d) FOR PURPOSES OF THIS SUBSECTION (2), "QUALIFIED ENTITY"
17 MEANS A COUNTY, HOME RULE COUNTY, CITY, TOWN, HOME RULE CITY,
18 HOME RULE CITY AND COUNTY, OR A PRIVATE NONPROFIT ENTITY THAT IS
19 EXEMPT FROM THE INCOME TAXES IMPOSED BY THIS ARTICLE.

20 (3) THIS SECTION IS REPEALED, EFFECTIVE DECEMBER 31, 2029.

21 **SECTION 2.** In Colorado Revised Statutes, 25-16-306, **amend**

22 (5) (b) as follows:

23 **25-16-306. Approval of voluntary clean-up plan - time limits**
24 **- contents of notice - conditions under which approval is void -**
25 **expiration of approval.** (5) (b) If the owner is applying for the tax credit
26 provided in ~~section 39-22-526~~ SECTION 39-22-526 (1), C.R.S., OR TO
27 TRANSFER A TRANSFERABLE EXPENSE AMOUNT PURSUANT TO SECTION

1 39-22-526 (2), C.R.S., the owner shall submit to the department the
2 certification along with an application pursuant to section 25-16-303. The
3 certification shall, in addition to certifying that the plan has been fully
4 implemented, disclose the costs of implementation and include supporting
5 documentation of those costs. The department shall then certify the
6 accuracy of the costs and issue the property owner a certificate stating
7 that the clean-up has occurred and the costs of such clean-up. The
8 property owner may submit this certificate to the department of revenue
9 to claim a tax credit OR TRANSFER A TRANSFERABLE EXPENSE AMOUNT
10 under ~~section 39-22-526 (2)~~ SECTION 39-22-526, C.R.S.

11 **SECTION 3. Act subject to petition - effective date.** This act
12 takes effect at 12:01 a.m. on the day following the expiration of the
13 ninety-day period after final adjournment of the general assembly (August
14 6, 2014, if adjournment sine die is on May 7, 2014); except that, if a
15 referendum petition is filed pursuant to section 1 (3) of article V of the
16 state constitution against this act or an item, section, or part of this act
17 within such period, then the act, item, section, or part will not take effect
18 unless approved by the people at the general election to be held in
19 November 2014 and, in such case, will take effect on the date of the
20 official declaration of the vote thereon by the governor.